IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE SIXTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT APPEAL NO : 1862 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 10/02/2004 in WP NO : 10258 OF 1993 on the file of the High Court.)

Between:

1 Andhra Pradesh State Electricity Board, rep., by its Member Secretary, Hyderabad.
2 Superintending Engineer, Operation Circle, A.P.State Electricity Board, Nellore.
3 Superintending Engineer, Operation Circle, A.P.State Electricity Board, Ongole.
4 Divisional Engineer, Enquiries Cell, A.P.State Electricity Board, Cuddapah.

..... APPELLANTS

AND

1 B.J.Prasad, s/o B.Swami Dass, r/o Jamalapalem, Jalandanki Mandal, Nellore District. (died) by LRs
2 Smt. B. Sushrillatha Joseph W/o. B.J. Prasad Kallurupalli village, Nellore rural Mandal, Nellore District.
3 B. Sudheer Kumar S/o. B. J. Prasad r/o Jamalapalem, Jalandanki Mandal, Nellore District.
4 B. Suresh Babu S/o. B.J. Prasad Kallurupalli village, Nellore rural Mandal, Nellore District.
RR 2to4 brought on record as LRs of deceased R1 as per Court Order dt. 29-12-2004

in WAMP 3856 of 2004

.....RESPONDENTS

Counsel for the Appellants : MR.S.KISHORE

Counsel for the Respondents: MR.O.MANOHER REDDY

The Court at the stage of admission, made the following JUDGMENT: (per TMK, J)

The writ appeal is filed by the appellant-Board against the order in W.P.No.10258 of 1993, dated 10.02.2004, passed by a learned single Judge of this Court.

For the sake of convenience, the parties are referred to as arrayed in the writ petition.

The said writ petition was filed by the writ petitioner to quash the memo dated 31.12.1992 issued by the 3rd respondent and consequently to direct the respondents to treat the writ petitioner as in service and to pay his salary along with consequential benefits.

It is the case of the writ petitioner that he availed casual leave from 4.8.1988 till 9.8.1988 and thereafter as his health condition deteriorated, he could not attend the duties. He made applications for voluntary retirement on 8.12.1989 and 20.12.1989 and subsequently as no action was taken by the respondents on the said applications, he has withdrawn them on 20.05.1991. Hence, he is deemed to be in service and is entitled to full pay along with consequential benefits. Thereafter, the respondent-Board after conducting a detailed enquiry into the matter, issued the impugned proceedings dated 31.12.1992 stating that as the writ petitioner was unauthorisedly absent from duty for more than one year, he should be deemed to have resigned from the service of the Board with effect from 10.8.1988 as per Regulation 28(3) of the A.P. Electricity Board Regulations (for short '**the Regulations**').

The learned single Judge of this Court after considering the material available on record and after hearing both the parties, opined that the respondent-Board ought to have permitted the writ petitioner to retire voluntarily on 10.8.1988 or on 20.8.1989

and held that the punishment of deeming resignation imposed by the respondent-Board as per Regulation 28 (3) of the Regulations is disproportionate to the alleged misconduct and the respondent-Board was directed to consider and accept the applications of the writ petitioner for voluntary retirement dated 8.12.1989 and 20.12.1989 treating the same as not withdrawn and to pay him all the consequential benefits thereof.

The learned counsel appearing on behalf of the respondent-Board, the appellant herein, has argued that as per Regulation 28(3) of the Regulations, if a person is unauthorisedly absent for more than a year, he is deemed to have resigned from the service and therefore, the writ petitioner is not entitled for any of the benefits as held by the learned single Judge and also further argued that the learned single Judge ought not to have held that the writ petitioner should be permitted to retire voluntarily, in the absence of any specific provisions.

The learned counsel vehemently contended that the learned single Judge ought not to have interfered with the punishment imposed, in view of the law laid down by the Apex Court in ***B.C.CHATURVEDI V.UNION OF INDIA.***

The learned counsel appearing on behalf of the writ petitioner has brought to our notice that the writ petitioner is no more and he expired on 21.01.2002.

Admittedly, the writ petitioner was in service up to 10.8.1988 and has put in 27 years of service. He was at the fag end of his service. Apparently, as observed by the learned single Judge, he fell sick and had to abstain from duties. It is also on record that the writ petitioner had opted for voluntary retirement, which request had been kept pending. Disgusted with the inaction of the respondent-Board, he was compelled to take back the said request. At this stage, the respondent-Board has chosen to initiate disciplinary action. Respondent-Board had not chosen to initiate any departmental proceedings during the period the writ petitioner abstained from duty i.e from 10.08.1988 to 25.05.1991. It is also on record that the writ petitioner had no blemish record during his long stint of 27 years of service. It also now transpired that the writ petitioner expired leaving behind his family. Taking the totality of the circumstances into consideration, this court is of the considered view that adherence to strict technicalities or a too technical approach would only cause hardship and injustice to the writ petitioner, who is no more.

During the course of arguments, the learned counsel appearing on behalf of the writ

petitioner has submitted that the legal representatives of the writ petitioner have chosen to confine their relief of claiming terminal benefits including the pension only up to 10.08.1988 the date till which the writ petitioner was in service.

In view of the submission made by the learned counsel for the writ petitioner that the writ petitioner died and the legal representatives of the deceased have come on record, we modify the order of the learned single Judge and permit the legal representatives of the writ petitioner to receive the terminal benefits and also other consequential benefits accrued to the writ petitioner including pension till 10-8-1988. Accordingly, we direct that the respondent-Board shall release the terminal benefits and other consequential benefits up to 10.8.1988 the date till which the writ petitioner was in service including pension accrued to the writ petitioner and pay to his legal representatives within a period of three months from the date of receipt of a copy of the order.

Accordingly, the Writ Appeal is disposed of.

(T.MEENA KUMARI, J)

Dt: 16.02.2005 (S.ANANDA REDDY, J)

To

1. The Member Secretary, Andhra Pradesh State Electricity Board, Hyderabad.
2 The Superintending Engineer, Operation Circle, A.P.State Electricity Board, Nellore.
3 The Superintending Engineer, Operation Circle, A.P.State Electricity Board, Ongole.
4 The Divisional Engineer, Enquiries Cell, A.P.State Electricity Board, Cuddapah.

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